

***REPORT OF THE
COURT REPORTING / RECORDING COMMITTEE***

September 28, 1992

COURT REPORTING / RECORDING COMMITTEE

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OVERVIEW

The Court Reporting/Recording Committee was established by the Attorney General on July 5, 1991 to examine the current methods of making and transcribing the court record in British Columbia, and to recommend any necessary changes.

The Committee's Terms of Reference were:

1. What is the most cost effective method of making and transcribing a record of court proceedings in the Supreme Court of British Columbia while maintaining and improving current standards?
2. How should the method chosen for reporting and/or recording court proceedings be organized and administered throughout the Province of British Columbia? Is one system suitable for the entire Province or should there be regional differences?
3. How effective are the current audio-recording and clerk/recorder programs?
4. Should litigants have a choice about the method of producing a record of the proceedings? If so, by whom should the additional costs, if any, be borne?

For the past several years in British Columbia, court record making has been the subject of debate, reorganization, conflict and uncertainty. Other jurisdictions in Canada and the United States have not escaped this turmoil.

A combination of several factors is responsible:

- i) the competing interests of audio/recording and reporting,
- ii) technological advances in the field,
- iii) increased demand for the service,
- iv) changes in government policy, and
- v) mismanagement of personnel and resources.

Reporters have always been a fundamental part of the justice system in British Columbia. Over the years they have seen their role in court record making diminished. Until the 1960's, reporters were responsible for making the court record in the Supreme Court and Provincial Court. Tape recorders were introduced in Provincial Court in the 1960's and use of them was expanded to cover all record making in Provincial Court in the 1970's. Today, reporters are occasionally asked to make a record of Provincial Court proceedings.

In 1984 the government privatized most of the official court reporters on staff in the Supreme Court and gave them a guaranteed number of days in court per month. Other reporters, who had never been on staff, were subsequently given contracts to report the court "as and when" required. A core group of 39 senior reporters remained on staff throughout the province. Today there are 83 "guaranteed day" contractors, 111 "as and when" contractors, and 25 staff reporters.

In 1987, Court Services significantly changed record making and transcribing in Provincial Court. In 55% of the criminal cases the court recorder was replaced by a court clerk who did both jobs in a new position of clerk/recorder, without any increase in salary. The typing of all transcripts was taken from government recorders and given to private transcribing companies. These changes became the blueprint for change in the Supreme Court.

The following year Court Services commissioned Interact Public Policy Consultants to examine various technologies and methods for making and transcribing court records in the Supreme Court. In its final report of March 22, 1990 Interact recommended replacing the reporters in all civil and non-jury criminal trials by electronic recording equipment and expanding the clerk/recorder program to the Supreme Court. The typing of transcripts for civil and non-jury criminal trials would be done by private transcribing companies.

Court Services sought to implement the recommendations of Interact for all civil proceedings in Supreme Court by September 1992. Tape recording equipment was installed in a number of court rooms throughout the province. In 1991-92 Chambers judgments were being electronically recorded by clerk/recorders and transcribed by private companies in all but two of the registries of the Supreme Court.

After opposition to the Court Services proposal continued to mount from reporters, lawyers and judges, the Attorney General appointed this Committee to review all aspects of the issue.

SUMMARY

The Committee rejects the proposal of Court Services to replace reporters with electronic recorders in Supreme Court and has concluded that major changes are required to ensure a more accurate, cost-effective and efficient method of making and transcribing the court record in British Columbia. The Committee believes that the implementation of its recommendations would result in considerable savings to the government by:

1. making the administrative system for court reporting more efficient;
2. shifting the cost of making the court record from the government to the transcript user; and
3. removing the cost of overhead and personnel presently allocated to the Staff Reporters' examination for discovery business.

With respect to the four issues raised by the Terms of Reference, the Committee has concluded that:

1. the most cost effective method of making and transcribing a record of court proceedings in the Supreme Court of British Columbia, while maintaining and improving current standards, is the use of Court Reporters within a revised administrative and financial framework;
2. the reporting/recording services throughout the Province of British Columbia should be centrally organized and administered from Vancouver, with flexibility to account for regional differences;

3. the current audio-recording and clerk/recorder programs are not as effective as the previous in-house government system;
4. other than litigants who order transcripts in advance to ensure access to real time facilities, litigants should not have a choice about the method for producing a record of the proceedings.

THE PROCESS

Throughout the work of the Committee, there has been considerable effort to ensure that the process was completely open. In all of its work, the Committee has been entirely independent of government.

In March 1992, an announcement of the Committee's Terms of Reference and scheduled public hearings was posted in all of the Supreme Court Registries and sent to a large number of reporters and legal associations. Announcements were published in the newspapers on March 20, 21 and 27, 1992 and the CBA Bar Talk on April 15, 1992. Public hearings were held on May 24, 25 and June 8, 1992 in Vancouver. Transcripts were made available to the public. Any participant who wished to make an oral submission to the Committee at the public hearing was invited to file a written submission. All written submissions received by April 30, 1992 were made available, in one bound volume, to any interested party two weeks prior to the first day of hearings. Throughout its public hearings, the Committee continued to invite further written submissions which were received until mid-August, 1992. A second volume of written submissions has been prepared and is available to the public. Telephone interviews were conducted with several reporters throughout the province. The Chief Justices of the Court of Appeal and the Supreme Court were consulted in a meeting on July 31, 1992.

The transcripts of the public hearings, along with the two volumes of written submissions, are being presented to the Attorney General with this report.

The Committee wishes to take this opportunity to express its gratitude to all of the participants who took the time and trouble to assist the Committee in its deliberations. A very special thanks must also go to our counsel, Gil McKinnon, who has worked tirelessly and efficiently to assist us. His good humour has been unfailing.

SUMMARY OF RECOMMENDATIONS

1. The Committee recommends that reporters continue to make and transcribe the record in Supreme Court.
2. The Committee recommends that ten court rooms in the five regions of British Columbia should be equipped for real-time capability and that one court room at the Vancouver Law Courts be equipped with the most advanced technology available.
3. The Committee recommends that there should be a Director of Reporting/Recording Services and support staff in Vancouver responsible for making the Court record in Supreme Court, Provincial Court and the Court of Appeal.
4. The Committee recommends that there should be significant changes in the manner in which reporters are compensated for their services.

i) Per Diem

The Committee recommends that all contract reporters should receive an attendance fee of \$250 per day and any contract reporter with a Certificate of Merit (250 wpm) should receive an attendance fee of \$275 per day.

ii) Transcript Fees

The Committee recommends that the fee for transcripts should be determined by tendering.

iii) Transcript User Pays Attendance Fee

The Committee recommends that where transcript is ordered in civil or criminal proceedings, the party(s) ordering transcript should pay the attendance fee of the reporter.

iv) Contracts

The Committee recommends that contracts should be personal service contracts signed for a period of three years with no option to sub-contract. Each reporter should receive a minimum 5 days guaranteed per month.

v) Adjustments

The Committee recommends various other adjustments to the contract terms.

5. The Committee recommends that the 25 staff reporters in the province should be given the option of remaining as staff employees and reporting the courts full time or becoming contract reporters with as many court days as they choose.
6. The Committee recommends that all court reporters, with the exception of the current penwriters in the province, have computer-aided transcription capability by 1994, and that for back-up purposes all reporters should tape the proceedings in court with a portable recorder.
7. The Committee recommends that in the Interior and Northern regions there should be an immediate return to the pre-1987 system of having government employees record and transcribe the proceedings in Provincial Court. In the regions of Vancouver, Westminster and Vancouver Island, the Director of Reporting/Recording Services should assess the cost effectiveness of implementing a similar change.

ELECTRONIC RECORDING V SHORTHAND REPORTING

1. The Committee recommends that reporters continue to make and transcribe the record in Supreme Court.

Comparison of recording/reporting

Both electronic recording and shorthand reporting are effective technologies for making and transcribing an accurate record of court proceedings. However, for electronic recording to be as consistently effective as shorthand reporting, two conditions must be satisfied:

- i) there must be a full time recorder in court whose sole responsibility is to operate and monitor the recording system and make a "log" of the proceedings, and
- ii) the transcription of the proceedings must be done by the recorder who made the recording in court or by a transcriber with a strong and direct working relationship with that recorder.

Making and transcribing a court record is not a passive exercise that can be done by simply turning on a recording machine and then giving the tape to someone else to type. It is a much more active process than that.

Making the record requires the full time dedication of a recorder who ensures the sound recording system is working properly with good tapes, listens attentively and appreciates the significance of making a detailed "log" of the proceedings - knowing all the while that he or she may be required to type a transcript of the proceedings or be called on to assist the person typing the transcript. Transcribing the record requires training, supervision, familiarity with court proceedings and an ability to understand what is on the tape. It helps to have a detailed "log" of the proceedings and to have been present in court.

The Court Services proposal to replace reporters with recorders does not meet the two conditions for an effective electronically recorded method of making and transcribing the court record. The proposal seeks to remove the full-time recorder in 55% of the civil trials in favour of a clerk/recorder and have a different person, employed by a private company, transcribe the proceedings.

Such a system in Provincial Court has produced unacceptable results in some parts of this province, most notably in the Interior and Northern regions. The Committee has received numerous written submissions from lawyers in these areas complaining about the unsatisfactory manner in which the court record is being made and transcribed in

Provincial Court. The inability or unwillingness of Court Services to remedy this situation is one reason the Committee is unable to endorse the plan to replace reporters in Supreme Court. The recent introduction of this system for Chambers Judgments in Supreme Court failed in the Vancouver Law Courts because it often produced poor transcripts and unacceptable delays.

The Committee sees no reason to take a chance on implementing a similar system for Supreme Court trials.

Cost

The Attorney General's Ministry relied upon cost-effectiveness as the principal ground for implementing its proposal for electronic recording in Supreme Court. The cost-benefit analyses of electronic recording and shorthand reporting provided to the Committee do not, in the Committee's view, make out a convincing case for change to electronic recording. The most optimistic projection of net savings to government is \$788,000 per year with adoption of a clerk/recorder program, or \$461,000 per year with a clerk and a recorder in attendance.

The Committee is not satisfied that there would be a net savings to the government if it changed to a method of electronic recording that complied with the two preconditions. The Committee is of the view that savings are available, with administrative change, in a system based on Court Reporters.

Additional Factors

The Committee took into account the following additional factors in concluding that reporters should remain in the Supreme Court:

- i) without exception, lawyers and judges throughout the province are in favour of keeping reporters in Supreme Court. Only Court Services and a few transcribing companies advocate replacing reporters with electronic recorders;
- ii) reporters have a 2 year academic and skill training course in English grammar, punctuation of the spoken word, legal and medical terminology, keyboarding and computer skills and must achieve a certain speed and accuracy to become certified;
- iii) most reporters are members of a professional association (the British Columbia Shorthand Reporters Association) which could take a more active role in setting and maintaining standards, disciplining members and encouraging educational and technological upgrading;

- iv) reporters are able to take advantage of technological advances. With computerization, reporters are able to produce quickly a finished transcript on disk or in hard copy. The possibility of real-time reporting with enhanced litigation support can only occur with reporters;
- v) the reporter who makes the record transcribes it. The quality of the transcript is enhanced and the chain of custody and integrity of the record is preserved;
- vi) with contract reporters, government overhead is reduced to the cost of administration. Contract reporters pay for their own education, training, support staff, office space, equipment and supplies.

REAL-TIME TRANSLATION

2. The Committee recommends that ten court rooms in the five regions of British Columbia should be equipped for real-time capability and that one court room at the Vancouver Law Courts be equipped with the most advanced technology available.

Real-time translation uses a computer-based stenographic machine, with built-in vocabulary, to produce, within seconds, the testimony in readable text of a witness on computer monitors in Court. This is accomplished by the matching of the reporter's stenographic keystrokes with the same stroking already stored in the reporter's "computer dictionary" and associated with a specific English word. If a "match" occurs, the English word appears on the monitor. If a match does not occur, an "untranslate" appears on the screen in the form of the stenographic keystrokes which, of course, are unreadable to the untrained eye but which can later be corrected by the court reporter or his or her assistant or "scopist." Ordinarily, untranslates will occur when new words are presented to the court reporter which are not already in his or her computer dictionary.

Reporters lessen the occurrence of "untranslates" by requesting lawyers to give them, in advance, a list of the names of witnesses, geographic locations or new technical terms which are expected to be used in the testimony so that these new words can be placed in the reporter's computer dictionary.

Real-time translation has a number of significant benefits for the judge, the lawyers, the litigants, the jury and others in the courtroom setting.

Real-time eliminates the need for readbacks by the court reporter in judge alone trials. If the judge or a lawyer misses any portion of the proceedings through inadvertence or because of cross-talk or a muffled statement, they need only refer to the monitor to be fully apprised of the content of the statement.

Real-time translation can permit hearing-impaired litigants and jurors to take part in trials in a new and more meaningful way than was previously possible. By providing the hearing-impaired individual with a computer monitor the real-time presentation permits full participation in all aspects of the trial proceedings.

Computers together with real-time translation and appropriate additional software have transformed the courtroom into a new venue for "litigation support" and have given the term an entirely new meaning.

The lawyers can bring the full text of their discoveries, legal memoranda and other trial materials to the courtroom on diskettes and "load" these materials onto the hard disk or memory system of the computer that has been assigned to their side of the case. The computers used by the parties and the court are separate, each having its own database and security code in order to ensure that proper handling is accorded to these confidential and privileged litigation materials.

The trial begins and at the close of each day a complete record of the proceedings is loaded onto the database of each computer, so that as the trial expands from days to weeks to perhaps even months, the trial participants have not only their own trial materials but a complete record of the trial itself on the hard disk of the computer.

Software has been developed which permits the court and counsel to independently review the database on their computer, thus enabling the participants to study and compare the material while the trial is in progress and while the real-time is being displayed on an alternate selection on their monitors. The litigation support software also permits the parties to search the database using boolean logic in a manner that is somewhat similar to the process used in conducting searches on the computer-assisted legal research databases. This review and search capability gives the trial lawyers and the judge a new ability to deal with the facts of an extended or complex case with a speed and accuracy that was previously unattainable.

This litigation support system virtually eliminates the need for the judge to take trial notes since he or she has available not only a complete record of the proceedings, but in addition, the ability to search it with infinite precision. The software also permits the judge and the lawyers to insert notes of their own in the testimony as it unfolds and to program the computer to highlight any key words which they expect to occur during the trial.

The real-time portion of this litigation support system permits creation of a simultaneously printed copy of the proceedings which can be made available to the lawyers immediately after the close of the court session so that it could be used, for example, to prepare for cross-examination of a witness, to prepare a written order from the court's orally announced decision or for any other purpose that court transcripts are traditionally used. The record prepared in this fashion is referred to as "dirty copy" since it has not been edited to eliminate the "untranslates." The reporter or scopist assistant can usually produce "clean copy" final transcript within a few hours of the end of the court day.¹

Real-time court rooms would be assigned by the Chief Justice of the Supreme Court, in consultation with the Director of Reporting/Recording Services, only in those cases where the litigants had committed themselves, in advance, to ordering transcripts of the proceedings. Real-time reporters would thus be guaranteed a transcript for every proceeding. We believe this will include lengthy complex matters where daily transcripts are now ordered as well as cases whose importance justify appeals regardless of the outcome.

¹ This description of real-time is based on an article by Roger G. Strand, U.S. District Judge, Phoenix, Arizona.

The cost of equipping ten court rooms with real-time capability should be shared by the reporter, supplier, government and litigants. The Committee recognizes there are many ways of achieving this cost-sharing objective. Having discussed various options with a supplier, the Committee recommends the following proposal to minimize costs to the government:

- i) the reporter would provide the hardware and software for the reporter's station;
- ii) the government would provide the software for the judicial work station;
- iii) the supplier would provide the hardware for the work stations for the judge and lawyers, the software for the lawyers and all court room wiring; and
- iv) the supplier would recoup its investment by a per diem fee to lawyers using the work stations.

The only cost to government to equip ten court rooms for real-time would be in the range of \$20,000, the cost of software for ten judicial work stations.

In addition, the Vancouver Law Courts would have one fully equipped court room with the most advanced technology available. This would enable court reporting in British Columbia to be at the cutting edge of technological advance. It is expected that suppliers, in the interest of seeing how the technology performs, would be prepared to supply the necessary equipment at minimal cost to the government.

ADMINISTRATION

3. **The Committee recommends that there should be a Director of Reporting/Recording Services and support staff in Vancouver responsible for making the Court record in Supreme Court, Provincial Court and the Court of Appeal.**

This recommendation parallels Recommendation 169 of Access to Justice: The Report of the Justice Reform Committee, 1988. The Committee believes that the Director should have the responsibility for record making and transcription services in all the Courts -- Provincial Court, Supreme Court and the Court of Appeal, including letting contracts, hiring staff, scheduling reporters/recorders, producing transcripts, supervising and disciplining reporters/ recorders and payment of accounts. The Director of Reporting/Recording Services should be responsible to a senior member of the Attorney-General's Ministry.

The Committee believes that having a person, who is not necessarily a reporter but who is knowledgeable about reporting, responsible for all reporting and recording services in the province should restore coherence and integrity to the system. For users, a common complaint is that no one seems to be in charge, and that there is no effective system for disciplining and supervising reporters. For contract reporters, a common complaint has been the scheduling of court assignments, whether by staff reporters, who are in direct competition with them in their examination for discovery business, or by Registry staff, who sometimes have little understanding or interest in their needs.

For court reporting to be cost-effective, the Committee recommends retaining the current system of personal contracts for court reporters rather than implementing a variation of the pre-1984 staff model system.

It is expected that the Director of Reporting/Recording Services would work closely with the Executive of the British Columbia Shorthand Reporters Association to ensure proper testing, upgrading, supervision and discipline of reporters.

In order to ensure effective court reporting throughout the Province of British Columbia, the Director of Reporting/Recording Services should be given flexibility in determining work conditions and compensation for reporters in those areas of the province distant from major urban centres. For example, in addition to reporting proceedings in Supreme Court in certain areas, a court reporter might be assigned to preliminary inquiries in Provincial Court.

By requiring all contracts to be let, administered and supervised through the Director of Reporting/Recording Services on a provincial basis, rather than through individual registries in the province on a regional basis, greater control could be exercised over standards and the assignment of reporters to particular areas, as well as over the movement of reporters, in times of need, from one location to another.

All transcript orders and payments should be processed through the Director of Reporting/Recording Services, thus enabling the Director to supervise the timely production of transcripts and, where necessary, to discipline tardy reporters. Complaints from any region of the province would go to the Director of Reporting/Recording Services.

The Director of Reporting/Recording Services should be required to build up a statistical base on the cost of making the court record, the volume of transcripts produced, the certification/grading of reporters and the discipline of reporters for the province. By requiring the publication of an Annual Report, the government and public would have a better understanding of the reporting/recording service.

REMUNERATION OF REPORTERS

4. The Committee recommends that there should be significant changes in the manner in which reporters are compensated for their services.

i) Per Diem

The Committee recommends that all contract reporters should receive an attendance fee of \$250 per day and that any contract reporter with a Certificate of Merit (250 wpm) should receive an attendance fee of \$275 per day.

Of the 194 contract reporters in the province today, 158 (81%) receive \$200 per day, 31 (16%) receive \$225 per day, and 5 (2%) receive \$250 per day. There has been no increase in these rates since 1984. By implementing the above recommendation, most reporters will enjoy an immediate increase of \$50 (25%) per day.

The justice system benefits from having skilled reporters, especially at a time when the pace of the Court-room is quicker, the cases are increasingly complex and technology is opening the door to challenging opportunities. While speed is not the only attribute of a good reporter, it can be readily ascertained and should be recognized through a higher attendance fee. Any reporter who obtains

a Certificate of Merit by demonstrating an ability to report 250 words per minute should be entitled to an additional \$25 per day.

ii) Transcript Fees

The Committee recommends that the fee for transcripts should be determined by tendering.

The Committee believes that the best way to determine the fair market value of a transcript page is through the tendering process. The process should be simple and straightforward. There should be a separate bid for ordinary transcripts and for real-time transcription. The tendering process would only be open to those reporters who satisfied the following requirements:

1. the reporter holds a current Certificate of Achievement (225 wpm),
2. the reporter has computer-aided transcription or will have by January 1, 1994 (current penwriters in B.C. would be exempted from this requirement), and
3. the reporter is prepared to sign a personal service contract with no provision for subcontracting.

The Committee envisages a very simple form of tender document in which the reporter would indicate:

1. years of experience,
2. whether the reporter holds a Certificate of Merit (250 wpm),
3. number of days wanted (at which Supreme Court registries),
4. prices for transcript page (O + 1).

The Director would review the bids knowing how many court reporting days are needed in each Registry. Initially the Director would determine the lowest price which could meet the Province's needs. We do not believe that the Director should be bound to accept the lowest bids. Other legitimate factors that might call for accepting slightly higher bids would be the opportunities to have reporters with greater qualifications or experience. Also relevant would be any apparent development of a monopoly in one or more regions by one reporting company.

Once the Director has determined the price for a page of transcript, all reporters who bid that price or lower would receive the same fee. The Director would then allocate court days among the successful bidders.

The real-time tendering process would be identical except for the need to satisfy the Director that the reporter had both the equipment and skills to work effectively in real-time.

It is expected that one transcript fee for computer-aided transcription and one for real-time transcription could be set for all of the province, although the Committee recognizes that there may have to be some regional differences.

iii) Transcript User Pays Attendance Fee

The Committee recommends that where transcript is ordered in civil or criminal proceedings, the party(s) ordering the transcript should pay the attendance fee of the reporter.

Historically in British Columbia, government has paid for making the court record through payment of the reporter's attendance fee while the transcript user has paid for transcribing the court record through payment of the transcript fee. The Committee believes that where transcript is ordered, the cost of making the court record should be shifted away from government onto the transcript user. This could be achieved by setting up a central accounting system in the office of the Director of Reporting/Recording Services which would process all transcript orders and payments.

While government would continue to pay the reporter's attendance fee every month, it would recoup that cost at a later date from the parties ordering transcript. A share of the reporter's attendance fee of \$250 would be added by the Director to the reporter's account for transcript. For every page of transcript,

the party ordering would pay an additional fee of \$3.00 per page to a limit of \$250 per day. This amount is calculated on the basis that an average day in court produces 80 pages of transcript and that most reporters would be receiving an attendance fee of \$250 or \$3.00 for every reported page. If more than one party orders transcript, the attendance fee would be shared. For an appeal, the party ordering would pay the full attendance fee up to the \$250 limit.

Assuming a transcript order rate of 30% of all proceedings in Supreme Court, the government would recapture 30% of the cost of the reporters' attendance fees. From 1986-1992, the government paid an average of \$2,400,000 per year for attendance fees.

Having all transcript orders and payments processed through the Director's office should assist the Director in ensuring expeditious compliance with all transcript requests. It should also assist the reporters in being paid promptly by transcript users.

iv) Contracts

The Committee recommends that contracts should be personal service contracts, signed for a period of three years, with no option to subcontract. Each contract reporter should receive a minimum 5 days guaranteed per month.

There should be a new tender for contracts and a review of the reporter's attendance fee every three years. Contracts should contain a provision to allow for the suspension and/or cancellation of a contract, if the reporter's work performance is unsatisfactory.

At present, the government has personal service contracts with 194 reporters. The Committee favours personal service contracts as opposed to agency contracts. Agency contracts favour the larger reporting companies, which could quickly monopolize the market for court reporting services in a given area and prevent reporters who prefer to work on their own or in smaller firms from obtaining court work. The Committee has concluded that government should, as a matter of principle, give every reporter with appropriate skills an opportunity to report the courts.

Personal service contracts would enable the Director of Reporting/Recording Services to ensure that only those reporters who had met appropriate standards would report the courts and that reporters would be assigned to cases that reflected their ability. Many of the problems that arise from sub-contracting would be avoided by using personal service contracts.

The integrity of the court reporting system is undermined by frequent sub-contracting. If the government has a contract with a reporter to cover specific days, that reporter should, if at all possible, fulfil that commitment. Where a reporter chooses to do a more lucrative examination for discovery on a court day and sub-contract the day to another reporter, the government is not receiving the service from the individual reporter with whom it has a contract.

The right to sub-contract has been abused over the years by reporters who have no inclination to report a court and yet retain their contracts to sub-contract their "guaranteed days" to a more junior reporter in exchange for a certain percentage of the attendance fee. That is a practice that must be stopped.

Only those reporters who want to report the courts should have contracts. Reporters who commit themselves to reporting the courts on given days should do so. Those reporters who think a prohibition on sub-contracting will reduce

their flexibility in maintaining a proper examination for discovery business should only contract for the minimum of 5 guaranteed days per month or should confine their reporting activities to examinations for discovery.

The Committee recommends that the current distinction between "guaranteed day" contractors and "as and when" contractors should be eliminated and that all contracts be for a minimum 5 days guaranteed per month. The Committee believes that contracts should be awarded for more than a guaranteed 5 day minimum, if a reporter wants more court days and the equitable distribution of court days for the area justifies an increased number. In addition to the guaranteed days, contractors might also work additional days, as and when required.

Wherever possible, reporters should be scheduled in blocks of 5 consecutive days. This would reduce the number of reporters for any trial and focus responsibility on one or two reporters for the production of transcripts on an appeal.

v) Adjustments

The Committee recommends various other adjustments to the contract terms.

a) Overtime

The Committee recommends that any court attendance by a reporter outside the hours of 9:00 a.m. to 5:00 p.m. from Monday to Friday should be paid by an hourly rate of \$50. The current rate of \$25 per hour for evening and week-end work is too low.

b) Jury Stand-by

The Committee recommends that the jury stand-by fee should be increased from \$25 per hour to \$35 per hour. If a reporter who made the court record is not in any other scheduled court when the jury deliberates, the reporter is entitled to a stand-by fee for jury read-back.

Considerable savings could be made by a more efficient scheduling of reporters on jury trials. If jury trials were scheduled in blocks of 5 straight days, fewer reporters would be required for stand-by.

c) Cancellation Fees for Non-Guaranteed Days

Unless the reporter has been given 7 days notice, the Committee recommends that a fee of \$50 per day should be paid for cancelling any additional days that are not guaranteed by the reporter's contract. Where cancellation occurs on the morning of the scheduled day, the cancellation fee should be \$100.

The current policy of giving a \$50 cancellation fee only if there has not been 24 hours notice of a cancelled court day is not equitable. This policy causes particular concern in some of the outlying areas of the province. Where a reporter is booked for 2 weeks court duty, but only works the first 2 days due to a shortage or settlement of cases, the reporter only receives two days attendance fees and possibly, one day cancellation fee. The reporter is often unable to book discovery work for the days immediately following. An extended notice provision of 7 days would partially compensate reporters for lost work and encourage greater efficiency in scheduling.

d) Partial Days

The Committee recommends that court days may be broken into half day units for scheduling and accounting purposes. Where a reporter is only required for a morning or afternoon attendance, the reporter can be booked for a half day and paid \$125 for that attendance. If a reporter is scheduled for a full day and then excused without reporting more than a half day, the reporter should receive a fee of \$175:

half day fee (a.m.)	\$125
cancellation fee (p.m.)	<u>\$ 50</u>
Total	\$175

By using half day units, the government should be able to save money where reporters are not required for the full day. In the current system, reporters receive the full day attendance fee even if they are excused after 1 hour's court attendance. Where special requests for transcript production are made requiring the attendance of two reporters, the Director of Reporting/Recording Services could schedule the two reporters for half-days rather than the current practice of scheduling two reporters for the full day.

e) Minimum \$25 Transcript Fee

The Committee recommends that there should be a minimum charge of \$25 for any transcript order. The Committee recognizes that reporters receive many small transcript orders for a few pages which do not compensate the reporter adequately for all of the time spent in taking orders, retrieving notes, reviewing court files, ascertaining correct case citations and transcribing. For this reason, the Committee believes a minimum charge of \$25 should be allowed.

STAFF REPORTERS

5. The Committee recommends that the 25 staff reporters in the province should be given the option of remaining as staff employees and reporting the courts full time or becoming contract reporters with as many court days as they choose.

Some historical perspective is necessary. In 1948, reporters contracted with the government to make the court record for \$7.50 per diem. In 1951, all court reporters became civil servants with a fixed salary. They were expected to report the courts and do examinations for discovery. The government furnished office space, support staff and court supplies. Transcripts from trial proceedings and examinations for discovery provided additional income for the reporter. Transcript income was considered a supplement to the government salary and a payment for the time required to produce the transcripts outside normal working hours.

From the outset, staff reporters have had a conflict between their duty to attend and report the courts and their legitimate interest in generating additional income from transcripts. The situation was exacerbated in 1978-79 when government began buying all the reporters' supplies for the production of transcripts, rather than increasing the price reporters could charge for transcripts. Public servants were entitled to use, at no extra charge, government premises, support staff, photocopy equipment and supplies to generate private income during and after office hours.

After the 1984 privatization of most reporters, a core group of 39 senior reporters remained on staff. Their examination for discovery business was in direct competition with the privatized contract reporters and they continued to have the benefit of government supplied office space and supplies.

Bernie Freeman and Margaret Hill, two staff reporters with many years experience at the Vancouver Law Courts, recognized the inequity of the current two-tiered system in their submissions to the Committee:

Bernie Freeman - oral submission, May 25, 1992

A: Well, but that's historical. This is the way it was in ... '51, and this is the way it was in '84 when the then Director of Court Services (Dave Warren) ... wrote us (remaining staff reporters) all a letter saying, "*your duties will carry on as they have been carrying on and we advise you to get in touch with lawyers to build up your discovery business ...*"

Q: So they were encouraging you to build up your discovery business?

A: Yes. Absolutely. Since 1951, the procedure in the Vancouver Court House was you went into a trial one day, you went into a discovery the next day, a trial, a discovery. That is the way it has always been. It was the way when I became Manager in 1980 (Vancouver Law Courts) and that is the way it has been and it still is to now ...

(Volume 1, p. 134, l.9-16, l.24-27, p. 135, l.1-4)

Q: And all of that overhead that you have in the Vancouver Court House, the office (10,000 square feet), the support staff (3.5 persons at \$21,987 per annum), the printing, the photocopying (Kodak photocopier, Ricoh fax machine, two PC's, one printer, 33 typewriters, foot staple machine and small binder), the office supplies, all of that is paid for by the government; correct?

A: Right.

Q: Individual staff reporters don't pay any money back to the government for using that to produce their own income from examinations for discovery, do they?

A: No. But they provide at their expense a girl who works in the print room full time, they provide an accountant for their accounting fees, and the government provides an office for the accountant, and they provide a delivery boy to deliver transcripts. So there is some expense involved with it, but if you are asking me, are we subsidized, there is no doubt about it, we are subsidized; I'm the first to admit it and the contract reporters aren't and that's what started all this Ombudsman's Report; the investigation by the Ombudsman. The contract reporters are unhappy and I don't blame them for a minute. But they also have to realize that this is the system that the Attorney General (Brian Smith) put into effect and then left for other greener fields but he put it into effect. We, as managers, carried it out, and if we hadn't carried it out, we would have been fired.

(Volume 1, p.139, l.15-27, p. 140, l.1-12)

Margaret Hill

"I was hired as a court reporter in Vancouver commencing January 8, 1968. My terms of employment were to work in the court, to take down and transcribe discoveries. I was provided with office space, supplies, support staff in the office. Today I work in Vancouver courts working in the court, taking down and transcribing discoveries. I am provided office space, supplies, support staff. In other words, for me nothing has changed.

At the time of "*privatization*" whenever that occurred, the "*core group*" was assured their terms of employment would not change. Upon that assurance, I personally relied.

I regarded the "*core group*" then as a "*divide and conquer*" tactic to spread dissent among reporters. I still do. The end result is inequitable; that was foreseeable from the time of privatization, and presumably taken into account. However, two wrongs do not make a right. Is it any more fair now to unilaterally change the terms of my employment? I think not."

(Volume II, written submissions, p. 142, June 3, 1992)

To return to Mr. Freeman's oral submissions before the Committee on May 25,

1992:

Q: Is it fair to say, Mr. Freeman, that all of the overhead that you have over there (Vancouver Law Court) in - as a staff reporter - really does not assist your work as a staff reporter, it assists your work in examinations for discovery considerably and it assists in the producing of transcripts, but does it really assist you in being a staff reporter? You are going to court 8 days a month. Could you not do that without all of that overhead as the contractor reporters do?

A: Mind if I think about that for a second?

Q: Certainly.

A: To be fair about it, placing us on an equal keel with the contract reporters is the fair way to go. As opposed to that, you must remember that we are public servants. Now, fine, you want to say you no longer will be public servants, that's one thing, but if you keep us there as public servants, we are entitled to the perks the public servants get. Regardless of whether we are reporters or clerks or sheriffs, we are employed as a public servant.

Now, as I said before, I can understand the unhappiness of the contract reporter with the subsidization of the court reporters. But that is a fact. We are public servants, it's been going on -- I've been a public servant for 32 years. That has gone on all of those 32 years. I've received subsidization and that's the way it's gone on since privatization. It's not a system I put into place. It's a system that the Attorney General previously put into place.

(Volume 1, p. 142, l.15-27, p. 143, l.1-17)

The argument for continuing the present system of staff reporters is that the government made a commitment to them in 1984 that cannot now be changed. The argument against the system is simply that it is not fair. In addition, government and the public service have become more sensitive to conflict of interest and appearance of conflict since 1984. The Committee believes that the present system should not continue.

While the Committee recognizes that there are several options available for resolving this problem, it recommends that the 25 staff reporters in the province should be given the option of:

- i) remaining as a staff reporter to report the courts, with no outside examination for discovery work, or
- ii) becoming a contract reporter.

i) Staff Reporter Option

- to report the courts 15 full days per month at a salary of \$55,620 plus benefits, based on a per diem of $\$309 \times 15 \text{ days} \times 12 \text{ months}$ (current salary of $\$29,680 \div 8 \text{ days} \div 12 \text{ months} = \$309 \text{ per day}$),
- transcript fees would be additional income for the reporter,
- staff reporters would not be allowed to do any outside examination for discovery work,
- staff reporters would be given office space, but not necessarily in the court house,
- the government would not hire any additional staff reporters but allow this position to be phased out by attrition.

ii) Contract Reporters Option

- if the current staff reporters wished to take the second option, they would be given as many court reporting days as they wanted with the same compensation as other contract reporters.

6.

SUPREME COURT PROCEEDINGS**i) Computer-Aided Transcription**

The Committee recommends that all court reporters, with the exception of the current penwriters in the province, have computer-aided transcription capability by 1994.

In accepting the recommendations of the Committee, the Attorney General should make a long term commitment to the future of court reporting in this province. For some years, court reporters have faced uncertainty over future employment prospects and have not invested as heavily as they otherwise might in updated equipment and computer technology. Once a firm commitment is made to a technologically advanced court reporting system, those reporters, who have not yet acquired the capability of computer-aided transcription through an investment of \$8,000-10,000, will be encouraged to do so.

ii) **Taping**

The Committee recommends that for back-up purposes all reporters should tape the proceedings in court with a portable recorder.

A criticism of Court Reporters is that occasionally there are problems in producing a transcript when a reporter becomes ill, dies, moves out of British Columbia, suffers loss or destruction of notes, or simply procrastinates. Having a tape of the proceedings in the Court Registry will provide a measure of protection from these problems.

A back-up tape can also be useful to a reporter by providing a verification of the accuracy of notes taken in Court. In cases in which a witness testifies in a language other than English (or French in the case of a French language criminal trial), the tape can provide a check on the accuracy of the interpretation.

The government would supply the tapes, the reporter would supply the portable recorder. At the end of the proceedings, the tape(s) would be given to the clerk for storage in the court house. If a reporter wished to retain a copy of the tape for personal records, the reporter could do so. In high volume transcript-producing centres, the government should provide a high speed duplicating machine for this purpose.

CLERK/RECORDER PROGRAM - PROVINCIAL COURT

7. The Committee recommends that in the Interior and Northern regions there should be an immediate return to the pre-1987 system of having government employees record and transcribe the proceedings in Provincial Court. In the regions of Vancouver, Westminster and Vancouver Island, the Director of Reporting/Recording Services should assess the cost effectiveness of implementing a similar change.

The deficiencies of the clerk/recorder program and privatization of transcription services in Provincial Court are apparent from the following written submissions from lawyers throughout the province:

Kamloops

- *"The current audio recording system in Kamloops is utterly hopeless. I am aware of one case in which counsel with whom I share office space has refused to pay for a transcript ... because its quality was so poor. I have a 41 page transcript containing thirty-five "indiscernables" together with a number of errors such as "... I want to back away earlier than that ...", "... and the following behind it ...", "... I can't give you an exact time frame ..." and numerous spelling errors, including the name of a Crown witness. In my experience, such a transcript is not unusual ...*

Although we have up-to-date recording equipment in Kamloops, the quality of our transcripts remains deplorable. I am firmly of the view that this is because the tapes are shipped to a different city and transcribed by people who really do not care to take the time to transcribe them with any semblance of accuracy

Kenneth Gillis, April 3, 1992

- *"It generally takes many weeks to obtain a transcript of an electronically recorded court proceeding because the tapes have to be sent to the transcriber, returned, and subsequently distributed;*
- *the accuracy of the tapes is somewhat appalling with words, often very key words, being left out of witnesses answers and/or the questions being asked by counsel. The typed transcription of what was said is sometimes unintelligible and notwithstanding the difficulty that sometimes exists in asking an intelligible question in the court room, the garbled typed versions of those questions render transcripts meaningless;*
- *there is no overnight nor even biweekly receipt of typed transcripts from electronic recording;*
- *there are often problems with the electronic recording devices not recording on all microphones or at all during the course of the court proceedings and there are some times when the court clerk does not notice when there are no recordings;*
- *speakers are not often identified or incorrectly identified and this can lead to problems when you are attempting to read transcript material to a witness;*
- *the transcriptions of expert testimony are often so garbled as to be unintelligible."*

Lorne Fisher, Crown Counsel, May 21, 1992

- *"In my experience, the standards of current audio recording programs are far below the standards employed by official court reporters ... Transcripts produced by a court recorder contain either very frequent notes that what was said is indiscernible or alternatively, the transcript is typed in a manner where large portions of what was said are simply omitted. The result is a neat transcript, but one that is not accurate."*

Reinhard Burke, April 21, 1992

- *"To date, our experience with the recording programs as carried out in the Provincial Courts in this area have neither been particularly accurate nor available in an expedited fashion. Too often the transcripts we receive back from the Provincial Court recording machines are replete throughout with the term "indiscernible." This, we suggest, is unacceptable."*

Richard Blair, April 14, 1992

- *"The current audio recording and clerk/recorder programs in service now produce an inconsistent and sometimes unreliable product. I have had them say to me in effect "have a listen to it yourself, it is a mess" and we also end up with transcripts showing "inaudible."*

John M. Hogg, Q.C., April 24, 1992

- *"My experience with the electronic recording system, and the company that operates it, has been dismal. We have had many transcripts with numerous mistakes including mixed up names, witnesses in the wrong place and many indiscernables where the content of the paragraph or sentence is lost. Also, there is too much of a delay in obtaining the transcripts."*

Alexander Watt, April 24, 1992

Nelson

- *"In consequence of discovering this error, I asked my assistant to review the transcript with the tape. The Registrar kindly provided facilities for that, and after a while, my assistant, Mr. McGreal, was able to tell me that there were a number of errors in the transcript. There were sixteen errors on page one alone. The errors consisted of missing words, the wrong words transcribed, words attributed to one counsel which were, in fact, said by another person; and, most significantly perhaps, the fact that he could hear perfectly plainly words that had been marked "undiscernible" by the transcriber.*

There appears to have been no problem whatsoever with the tape recording, and the problem seemed to lie completely with the transcribing work ..."

Donald Skogstad, August 21, 1991

Quesnel

- *"As the preparation of transcripts is contracted out to various persons throughout the province, it is sometimes difficult to obtain transcripts. For example, Prince George Supreme Court Chambers transcripts are prepared by a firm in the Okanagan. Sometimes very long delays result in obtaining these transcripts."*

Patricia Schmit, March 27, 1992

Vernon

- *"The present audio recording and court/recorder programs in my opinion are highly ineffective."*

Paul Danyliu, June 4, 1992

- *"Since the advent of private companies transcribing tapes, the quality has fallen compared to those same tapes being transcribed by court recorders who were present at the proceeding and who kept topic by topic notes."*

Robert Blakely, June 9, 1992

In its written submission to the Committee dated January, 1992, Court Services wrote the following at page 7:

"The use of audio tape recording equipment in the Provincial Court and the resulting transcription from tape has been very successful in British Columbia. Although there were some minor start-up problems since the contracting of transcribing services in 1988, the system has functioned effectively in terms of accuracy, verifiability and timeliness of orders."

Court Services has been unable to remedy the problems which exist in the Interior and Northern regions. Attempts by Court Services to provide improved monitoring and supervision, and attempts by the major contractor, Scott Personnel Ltd., to improve training and internal administrative systems appears not to have achieved the results which are required. The Committee has no confidence that a private contract model can adequately respond to the problems of geography and transportation that any contractor would face in attempting to service the whole of the Interior and/or Northern regions.

For this reason, the Committee recommends that in the Interior and Northern regions there should be an immediate return to the former system of in-house recording/transcribing by government employees that was dismantled by Court Services in 1987. That system had a properly trained and supervised recorder in Court to make the record and then produce a transcript of the proceedings, if required. Tapes were not being shipped from community to community for transcription but done on location by an experienced Court Recorder. In some locations, a quality service for transcribing the court record might be available at comparable costs through alternative methods of using individual residents or small companies in the community. The Director of Reporting/Recording Services should be given the ability to choose such an option where it is available.

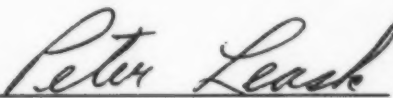
In returning to the former system, government should recognize the skill of the recorder and pay accordingly. The recorder is not a mere typist but rather a person who has training in recording machines, court vocabulary and procedures, skill in the computer word processing systems and an ability to understand and translate the taped word to the transcript form. A successful revamping of the Provincial Court recording system is dependent upon proper financial recognition of the participants' unique contribution to the administration of justice in this province. The Director may find it helpful to use reporters in Provincial Court for lengthy preliminary inquiries and other probable transcript requirements in some areas of the Province.

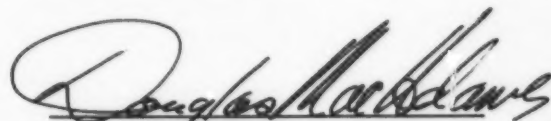
Accurate and timely transcripts in Provincial Court can be produced by the current system where there are individuals in government and transcribing companies who are experienced in court record making and dedicated to high standards. It is working reasonably in the other three regions of the province - Vancouver, Westminster and Vancouver Island. However, there is concern that over the coming years there may be a breakdown of the current system when experienced recorders, who worked as civil servants prior to 1987 and were hired by the transcribing companies, leave the work force. As the Committee believes that a better system is the in-house recording/transcribing by government employees, the Committee recommends that the Director of Reporting/Recording Services should assess the cost effectiveness of changing the current system in these three regions to the former pre-1987 system.

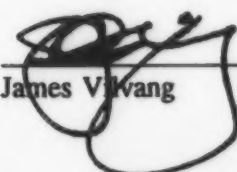
CONCLUSION

The issues the Committee faced at first appeared to be technical: *should reporters be replaced with recorders?* The issues in fact were administrative and financial: *what administrative structure will ensure government gets maximum value for the money spent on reporting and how can government equitably and fairly recover costs from users?* The Committee has concluded government can save money by addressing the issue of staff reporters, by giving a Director of Reporting/Recording Services sufficient authority and flexibility to obtain full value for money spent with contract reporters, and by recovering attendance fees from litigants who order transcripts. The Committee has concluded that if these administrative and financial reforms are put in place, British Columbia will maintain current standards, and will open the door at affordable cost to the improvements in standards which technological advances are now making available. We strongly believe that real-time will improve trials and appeals. Only reporters can produce real-time transcription. The Supreme Court should not be deprived of reporters.

All of which is respectfully submitted by:


Peter Leask, Q.C.


Doug MacAdams


James Vilvang

September 28, 1992

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